



# **PUBLIC EMPLOYMENT RELATIONS BOARD**

## **2007-2008 ANNUAL REPORT**

**October 15, 2008**



**ARNOLD SCHWARZENEGGER, GOVERNOR**

**STATE OF CALIFORNIA**

# **PUBLIC EMPLOYMENT RELATIONS BOARD**

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### **Board Members**

KAREN L. NEUWALD  
SALLY M. MCKEAG  
ROBIN W. WESLEY  
TIFFANY RYSTROM  
ALICE DOWDIN CALVILLO

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**PUBLIC EMPLOYMENT RELATIONS BOARD**

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October 15, 2008

Dear Members of the Legislature and fellow Californians:

We are pleased to present this annual report summarizing the activities of the Public Employment Relations Board (PERB or Board) during the preceding fiscal year. PERB was established 32 years ago, with its jurisdiction initially comprised of the Educational Employment Relations Act establishing collective bargaining in California's public schools and community colleges. Over the last 30 plus years, PERB's jurisdiction expanded to encompass seven collective bargaining statutes, approximately 7,000 public-sector employers, and more than two million public-sector employees. PERB is responsible for administering and enforcing these laws in an expert, fair, and consistent manner.

Like past years, times remain busy at PERB. The number of cases reviewed each year by the Board has grown significantly with the addition of the newest public employers and employee organizations to PERB's jurisdiction. This is particularly true since cities, counties, and special districts under the Meyers-Milias-Brown Act were added to PERB's jurisdiction. Fiscal Year (FY) 2007-2008 resulted in 816 unfair practice charges filed with PERB; compared to 461 charges in FY 2000-2001.

The majority of PERB's unfair labor practice complaints are resolved through voluntary settlement efforts, an important step among the resolution processes offered by PERB. In FY 2007-2008, the rate of settlement during or as a result of PERB's informal settlement conference process was nearly 60 percent. In cases where mediation is not successful, the parties are provided the opportunity to litigate their disputes efficiently. One of the Board's critical jobs is to provide guidance to the parties through clear and concise decisions. The Board itself issued 65 decisions in FY 2007-2008.

This year culminated in court litigation consistent with, and even slightly higher than, last fiscal year for PERB. Litigation work at PERB has increased by more than 60 percent in recent years; unlike other State agencies, litigation work is absorbed exclusively by in-house attorneys at PERB. While some of this activity involves defending Board decisions in California's Courts of Appeal, PERB's litigation work is partly attributable to efforts to protect the agency's exclusive initial jurisdiction over the statutes it administers. PERB also considered 28 requests for injunctive relief in FY 2007-2008—an all-time high in PERB's 32-year history. Only one was granted in FY 2007-2008, reflecting the high standard of proof the affected party must meet when seeking this course of action.

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Providing exceptional service to the people of California and swiftly resolving labor-relations disputes remains the Board's top priority. We likewise remain committed to enhancing offerings to PERB constituents. For example, in addition to recent website improvements, PERB provides and fosters viable training opportunities for PERB practitioners statewide. This year, PERB co-sponsored the Center for Collaborative Solutions' 19th annual Labor-Management Conference in Southern California and committed to planning efforts for the Association of Labor Relations Agencies' conference next year in Northern California. PERB's Advisory Committee, composed of key members of public-sector labor and management communities, plays a valuable role in developing recommendations in such areas relevant to PERB's mission of promoting harmonious public-sector employer-employee relations in California.

All of us at PERB hope you find this report informative and helpful.

Respectfully submitted,

Karen L. Neuwald  
Chair

## **Introduction of Board Members and Administrators**

### **Board Members**

**Karen L. Neuwald** was appointed to the Board July 2005 and became the Chair in August of 2007. Prior to her appointment, she was the Chief of the Office of Governmental Affairs at the California Public Employees' Retirement System for two years. She served as the Assistant Director for Legislation at the Department of General Services from November, 1996, to July, 2003. For 11 years prior to DGS, Ms. Neuwald worked at the Department of Personnel Administration. She began her career at DPA working on policy and legal issues, and then spent six years directing DPA's legislative program. Ms. Neuwald had her entrée in state government in 1982 working as an analyst at the Legislative Analyst's Office. As a program analyst, she worked on budget matters related to employee compensation, collective bargaining, health care, and retirement issues. Overall, Ms. Neuwald has enjoyed a 26 year career in state government service. Ms. Neuwald is a graduate of the University of Oklahoma where she received two bachelor degrees, one in social work and the other in recreation, and the University of Texas, where she received a master's degree in public affairs. Her term expires on December 31, 2009.

**Sally M. McKeag** was reappointed to PERB by Governor Arnold Schwarzenegger on February 23, 2007. She has served in this capacity since March 2005. Her term ends on December 31, 2011.

Prior to her appointment to the Board, she served as Chief Deputy Director of the California Employment Development Department. She also served as Deputy Staff Director of the Governor-Elect's Transition Team.

Ms. McKeag returned to California after two years in Washington, D.C. where she worked for the U.S. Department of Labor. Specifically, she was recruited to serve as Chief of Staff to the Department of Labor's Employment and Training Administration Assistant Secretary.

Prior to her employment at the Department of Labor, Ms. McKeag served in a variety of capacities for the California State Senate and the Wilson Administration. Specifically, she was Director of Public Affairs for the Senate Republican Caucus where she oversaw the development and implementation of strategies to support Senate members in representing their constituencies. Under Governor Pete Wilson, she served as Deputy Director of Operations for the Department of Consumer Affairs, Acting Deputy Director of the Department of Fish and Game, and Director of the Governor's Office of Constituent Affairs.

Before coming to California to work for Governor Wilson, Ms. McKeag served in the Reagan and Bush Administrations in Washington, D.C. She was the Director of the Executive Secretariat at the Environmental Protection Agency, overseeing the coordination of all correspondence and other official documents for the EPA Administrator. Ms. McKeag was also Special Assistant to the Secretary of the Interior, supervising all functions related to scheduling of the Secretary's participation in official and political events.

**Robin W. Wesley** was appointed to the Board in July 2007. Ms. Wesley first came to PERB in January 1991 as a legal adviser to a Board member. She served as a legal adviser to five different Board members before joining the General Counsel's office as a regional attorney. In July 2006, Ms. Wesley was tapped to serve as the acting General Counsel. Thereafter, she served briefly as an administrative law judge before her appointment to the Board.

From 1983 to 1991, Ms. Wesley served as deputy director for local government affairs in Governor Deukmejian's Office of Planning and Research. From 1978 to 1983, she served as the District representative for Assemblyman Dave Kelley.

Ms. Wesley is a graduate of Westmont College and McGeorge School of Law. She is a member of the Labor and Employment section of the California State Bar. Her term expires on December 31, 2010.

**Tiffany Rystrom** was appointed to the Board in August 2007. Prior to her appointment, and since 2001, she has been of counsel with the law firm Carroll, Burdick & McDonough. From 1983 to 2000, Ms. Rystrom was a partner in the law firm Franchetti & Rystrom. Previously, she served as a deputy attorney general for the California Attorney General's Office from 1980 to 1983 and a deputy district attorney for the Marin County District Attorney's Office from 1978 to 1979. From 1977 to 1978 she served as a judicial clerk for Division One of the First District Court of Appeal. Ms. Rystrom is a member of the California State Bar.

**Alice Dowdin Calvillo** was appointed to the Board by Governor Arnold Schwarzenegger in January 2008. With more than 20 years of experience working in State and local government, Ms. Dowdin Calvillo is the newest member of the Board. Since 2005, Ms. Dowdin Calvillo served in several senior level advisory positions to Governor Schwarzenegger, including as Chief Deputy Cabinet Secretary and Chief Deputy Appointments Secretary. Before joining the Governor's Office, she was Governor Schwarzenegger's Legislative Director for the California Department of Toxic Substances Control.

Governor Pete Wilson appointed Ms. Dowdin Calvillo as a Chief Advisor to the California Integrated Waste Management Board in early 1998 and prior to that she was his appointment as Deputy Director of Legislation and Operations for the Managed Health Care Improvement Task Force. Ms. Dowdin Calvillo also served as the Chief Consultant to the California State Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee in the mid 1990s. Before joining the Assembly staff, Ms. Dowdin Calvillo served in a variety of senior analytical positions within State service.

Ms. Dowdin Calvillo served two terms on the Auburn City Council from 1998-2005 and was Mayor in 2001 and 2005. During her tenure on the City Council, Ms. Dowdin Calvillo served on several commissions and committees, including the Placer County Economic Development Board (where she also served as Chair), Board of Directors for the Sacramento Area Council of Governments, Regional Wastewater Treatment and Storage Facility Joint Powers Agreement, and Local Agency Formation Commission for Placer County. In addition, she was a member of the Sacramento Region Advisory Board for the Great Valley Center.



The Placer County Board of Supervisors appointed Ms. Dowdin Calvillo as the District 3 representative on the Placer County Parks Commission in 1997, where she served as its Chair in 1999 and 2000.

Ms. Dowdin Calvillo obtained her Bachelor of Arts in Political Science-Public Service and in German from the University of California, Davis. She is married to Captain Frank Calvillo, ret. United States Marine Corps, and the couple are the proud parents of a beautiful baby girl.

**John Duncan** was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger February 2004. In August 2007, Mr. Duncan resigned his position as Chairman at PERB and accepted an appointment by the Governor as the Director of the Department of Industrial Relations. Prior to his appointment at PERB, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson as the Director of the Department of Industrial Relations. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in history and holds a masters degree in public administration from Harvard University's John F. Kennedy School of Government.

**Lilian S. Shek** was appointed to the Board by Governor Arnold Schwarzenegger in November 2004. Prior to her appointment, she was an Administrative Law Judge II for the Unemployment Insurance Appeals Board, where she served from April 1992 to November 2004. In 1994, Governor Pete Wilson appointed her to the Governor's Advisory Selection Committee, the Regents of the University of California. Before April, 1992, she was an attorney in private practice; an assistant professor and lecturer in business law at California State University, Sacramento; a hearing officer for the Sacramento County Civil Service Commission; and a judge pro tem for the Small Claims Department of Sacramento County Superior and Municipal Courts. She was an assistant counsel for the California Farm Bureau Federation; and received a Reginald Heber Smith Community Lawyer Fellowship to serve as a staff attorney for the San Francisco Neighborhood Legal Assistance Foundation and Legal Services of Northern California. She was actively involved in several professional organizations. She was a Barrister of the Anthony M. Kennedy American Inns of Court; Chair of the California State Bar Committee on Women in the Law; President of Women Lawyers of Sacramento; and a member of the American Women Judges Delegation to the People's Republic of China. She earned her Bachelor of Arts degree in sociology from the University of California, Berkeley; her Doctor of Jurisprudence degree from Hastings College of the Law, University of California; and her Masters of Business Administration degree from California State University, Sacramento. Her term expired on December 31, 2007.

## **Legal Advisers**

**Gregory T. Lyall** was appointed as Legal Adviser to Member Sally M. McKeag in June 2005. Previously, Mr. Lyall served as a staff counsel at the California Department of Personnel Administration from 2001 to 2005. Before entering state service, Mr. Lyall was an associate attorney with the law firms of Kronick, Moscovitz, Tiedemann & Girard (1997-2001) and Pinnell & Kingsley (1994-1997). Mr. Lyall received his B.S. degree in Biology from the University of Southern California and his Juris Doctorate from the University of San Diego School of Law where he graduated with *cum laude* honors and served as a member of the San Diego Law Review. Mr. Lyall currently teaches a class on labor and employment law through U.C. Davis Extension.

**Heather Glick** was appointed as Legal Adviser to Member Karen L. Neuwald in September 2005. Ms. Glick began her career in labor and employment law in law school when she clerked for the Los Angeles Unified School District and Milwaukee Public Schools in their respective labor relations departments. Upon graduating from Valparaiso University School of Law, she worked for the State of Illinois as Labor Relations Counsel where she represented all agencies under the auspice of the Governor in arbitrations and before the Illinois Labor Relations Board. After leaving state service, Ms. Glick worked for Ancel, Glink, Diamond, Bush, DiCianni & Rolek (2002-2004) and Liebert Cassidy Whitmore (2004-2005), boutique firms specializing in local government law. Ms. Glick received a B.A. degree in Sociology of Law and English from the University of California, Davis.

**Kevin Geckeler** was appointed legal adviser to Board Member Tiffany Rystrom effective December 2007. Since 2004, he served as labor relations counsel for the Department of Personnel Administration. From 2000 to 2004, Mr. Geckeler was managing attorney for the Human Rights/Fair Housing Commission. Previously, he was in private practice from 1995 to 2000 in the Law Office of Kevin Geckeler. Mr. Geckeler earned a Juris Doctorate degree from McGeorge School of Law and a Bachelor of Arts degree from Kenyon College.

**Erich Shiners** was appointed as legal adviser to Board Member Alice Dowdin Calvillo on March 20, 2008. Since 2006, Mr. Shiners served as an attorney at Renne Sloan Holtzman Sakai, representing public sector and non-profit employers in labor and employment litigation, arbitration and negotiations. He has served as an adjunct instructor of Appellate Advocacy for McGeorge School of Law since 2004. In 2006, Mr. Shiners was a law clerk for Weinberg, Roger & Rosenfeld and in 2005 was a judicial extern for the Honorable M. Kathleen Butz at the Third District Court of Appeal. Mr. Shiners has also been a law clerk at the National Labor Relations Board in Washington, D.C. and the Agricultural Labor Relations Board in Sacramento. He earned a Juris Doctorate degree from the University of the Pacific, McGeorge School of Law and a Bachelor of Arts in history from the California State University, Sacramento.

**Christine D. Lovely** was appointed as Legal Adviser to John Duncan, the former Chairman of PERB, in November 2006. Beginning in August 2007, Ms. Lovely was Legal Adviser to Board Member Robin Wesley until her departure in June 2008 following her appointment as Associate General Counsel for the Sacramento County Office of Education. Before coming to PERB, Ms. Lovely represented school districts and community college districts in various matters as an associate in the Pleasanton office of Atkinson, Andelson, Loya, Ruud & Romo (1996-2006). At Atkinson, Andelson, Loya, Ruud & Romo, Ms. Lovely developed a specialization in disability matters and personnel issues. Ms. Lovely received her B.A. in Mass Communications from the University of California, Berkeley, and her Juris Doctorate from the University of California Davis School of Law (King Hall).

**Jean C. Fung** was appointed as a Legal Adviser to Board member Lilian Shek in October 2006 and served at PERB until her departure in February 2008. Ms. Fung graduated from Stanford University in 1992, with A.B. and B.S. degrees in civil engineering and English. She received her J.D. from UC Berkeley, Boalt Hall School of Law, in 1995. From 1995 to 1997, she was an associate at Fitzgerald, Abbott & Beardsley LLP in Oakland. From 1998-2002, Ms. Fung was an associate at Murtha Cullina LLP in Hartford, Connecticut. After moving back to California, she performed contract work for Sacramento law firms until her appointment at PERB.

### **Administrators**

**Bernard McMonigle** is the Chief Administrative Law Judge for PERB. He has been on the staff of PERB since 1988. Prior to his permanent appointment as an administrative law judge, he served as a senior counsel in the office of the General Counsel.

Mr. McMonigle has worked as a labor relations neutral since 1977, when he was appointed as a Commissioner of Mediation for the Federal Mediation and Conciliation Service. Before joining PERB he was a Board Counsel for the California Agricultural Labor Relations Board. He has also served as a labor arbitrator and an ad hoc hearing officer for the Sacramento County Civil Service Commission.

A 1984 graduate of the University of the Pacific McGeorge School of Law, Mr. McMonigle also earned a B.B.A. in Economics from the University of Georgia and an M.S. in Employment Relations from American University in Washington, D.C. A member of the Labor and Employment section of the state bar, he served as the 1999 Chair of the Sacramento County Bar Labor and Employment Law section.

**Tami R. Bogert** was appointed General Counsel of PERB in February 2007. Before joining PERB, Ms. Bogert served as Deputy Legal Affairs Secretary for and in the Office of Governor Schwarzenegger from 2003 to 2007. Prior to that, she served at the California District Attorneys Association as a Director, a Supervising Attorney, and earlier on as Counsel for the Violence Against Women Project. Ms. Bogert also served during the 1990s as a member of the legal affairs team under Governor Wilson and in the California Attorney General's Office.

**Wendi L. Ross** joined PERB as Deputy General Counsel in April 2007 and has more than 18 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, Department of Personnel Administration as a Labor Relations Counsel. Prior to that position, she was employed as an associate attorney with the law firms of Pinnell & Kingsley and Theirman, Cook, Brown & Prager. She has also served as Chair of the Sacramento County Labor and Employment Law Section.

**Eileen Potter** began working for PERB in 1993 as the Administrative Officer. Her state service includes the Governor's Office of Planning and Research (OPR) from 1979 through 1990 culminating in her appointment as the Assistant Chief of Administration. After leaving OPR, Ms. Potter worked at the Office of Statewide Health Planning and Development and the Department of Health Services before coming to PERB as its Administrative Officer. She has a degree in Criminal Justice Administration with minors in Accounting and English from California State University, Sacramento.

**Anita I. Martinez** has been employed with PERB since 1976 and has served as San Francisco Regional Director since 1982. Her duties include supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of settlement conferences, representation hearings, and elections. Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, California Public Sector Labor Relations, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her B.A. from the University of San Francisco.

**Les Chisholm** currently serves as Division Chief, Office of the General Counsel for PERB and served as Sacramento regional director since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and technology projects for the Board. He received a B.A. from Florida Atlantic University and M.A. in political science from the University of Iowa.

## **II. OVERVIEW**

### **Statutory Authority and Jurisdiction**

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public-sector collective bargaining in California. The Board administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties. The statutes administered by PERB since the mid-1970s are: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code, § 3540 et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code, § 3512 et seq.), establishing collective bargaining for State employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code, § 3560 et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968 (Gov. Code, § 3500 et seq.), which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include the supervisory employees of the Los Angeles County Metropolitan Transportation Authority. The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) is codified at Public Utilities Code section 99560 et seq.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 (Gov. Code, § 71600 et seq.) and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002 (Gov. Code, § 71800 et seq.).

Since 2001, approximately two million public-sector employees and their employers are included within the jurisdiction of the seven labor statutes administered by PERB. The approximate number of employees under such statutes is as follows: 675,000 work for California's public education system from pre-kindergarten through and including the community college level; 125,000 work for the State of California; 100,000 work for the University of California, California State University, and the Hastings College of Law; and the remaining public employees work for California's cities, counties, special districts, trial courts, and the Los Angeles County Metropolitan Transportation Authority.

## **PERB's Purpose and Duties**

### **The Board**

The Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to five-year terms, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the seven statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by Board agents. Decisions of the Board itself may be appealed under certain circumstances, and then only to the State appellate courts. The Board, through its actions and those of its agents, is empowered to:

- conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- ensure that the public receives accurate information and has the opportunity to register opinions regarding the subjects of negotiations between public-sector employers and employee organizations;
- interpret and protect the rights and responsibilities of employers, employees, and employee organizations under the Acts;
- bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- conduct research and training programs related to public-sector employer-employee relations; and
- take such other action as the Board deems necessary to effectuate the purposes of the Acts it administers.

A summary of the Board's 2007-2008 decisions is included in the Appendices, beginning at page 26.

### **Major PERB Functions**

The major functions of PERB involve: (1) the investigation and resolution of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) the appeals of Board staff determinations to the Board itself; and (4) the legal functions performed by the Office of the General Counsel.

## Unfair Practice Charges

The investigation and resolution of unfair practice charges is the major function performed by PERB. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. Unfair practice charges can be filed online, as well as by mail, facsimile, or personal delivery.

An unfair practice charge alleges an employer or employee organization engaged in conduct that is unlawful under one of the labor statutes administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; and promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of the statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the EERA, Dills Act, HEERA, MMBA, TEERA, Trial Court Act, or Court Interpreter Act has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, it is dismissed. The charging party may appeal the dismissal to the Board itself.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent may file an answer to the complaint.

Once a complaint is issued, another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. A hearing usually occurs within 100 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board itself are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Decisions of the Board itself are both binding on the parties to a particular case and precedential. All Board decisions are available on our website (<http://www.perb.ca.gov>) or by contacting PERB. On the PERB website, interested parties can also sign-up for electronic notification of new Board decisions.

## **Representation**

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent holds a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination. That determination sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB conducts a representation election in cases where the employer has not granted recognition to an employee organization to serve as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of “No Representation” appears on the ballot in every representation election.

A summary of PERB’s 2007-2008 representation activity is included in the Appendices at page 24.

## **Mediation/Factfinding**

PERB staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. If impasse occurs, a Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

If settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory factfinding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning settlement terms.

## **Appeals Office**

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered, and prepares



administrative records for litigation filed in California's appellate courts. This office is the main contact with parties and their representatives while cases are pending before the Board itself.

### **Office of the General Counsel**

The legal representation function of the Office of the General Counsel includes:

- defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in the State appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or with a subpoena issued by PERB;
- seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

A summary of PERB's 2007-2008 litigation activity is included in the Appendices, beginning at page 56.

### **Other PERB Functions and Activities**

#### **Information Requests**

As California's expert administrative agency in the area of public-sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations, and formal decisions. Information requests from the Legislature and the general public are also received and processed.

#### **Support Functions and Board Operations**

The Administration Section provides support services to PERB, such as business services, personnel, accounting, information technology, mail, and duplicating. This section also handles budget development and maintains liaison with the Department of Finance and other State agencies.

PERB emphasizes automation as a means of increasing productivity and, therefore, has moved forward with the full development of its website. PERB's website now provides the ability to access PERB decisions, regulations, statutes, and forms online.

### **III. LEGISLATION AND RULEMAKING**

#### **Legislation**

In 2007, there were amendments enacted affecting the Dills Act, EERA, and Trial Court Act.

Assembly Bill 1194 (Chapter 21, Statutes of 2007) restored “right to self-representation” language to Government Code section 3543.1 in EERA that had been deleted by Senate Bill 1960 (Chapter 893, Statutes of 2000). The significance of the deletion of language was addressed by the Board in Woodland Joint Unified School District (2004) PERB Decision No. 1722.

Assembly Bill 299 (Chapter 130, Statutes of 2007) included technical, non-substantive changes in various provisions of law. Among the sections amended were Government Code sections 71601, 71615, 71639, and 71675 (Trial Court Act). These changes effectuate the recommendations made by the Legislative Counsel to the Legislature, pursuant to existing law that directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

Senate Bill 90 (Chapter 183, Statutes of 2007) requires the Office of the State Chief Information Officer to, among other things, approve and oversee information technology projects, establish and enforce state information technology strategic plans, policies, standards, and enterprise architecture, and produce an annual strategic plan. Among the “other related provisions” of this legislation was an amendment to the definition of state employee found at Dills Act section 3513(c), excluding from the definition “employees of the Office of the State Chief Information Officer except as otherwise provided in Section 11546.5.”

#### **Rulemaking**

The Board did not consider any rulemaking proposals in the 2007-2008 fiscal year.

## **IV. CASE DISPOSITIONS**

### **Unfair Practice Charge Processing**

The number of unfair practice charges filed with PERB has increased as a result of the newest public employers and employee organizations under PERB's jurisdiction realizing that PERB can assist in resolving their labor disputes. In 2007-2008, 816 new charges were filed. While this number is slightly lower than the number of charges filed during the prior fiscal year, it nevertheless continues an overall increase in filings since July 2001. The average number of unfair practice charges filed during the 10 years preceding July 1, 2001 was 551 per year. The average number of annual filings since July 1, 2001 is 842, with fiscal year totals ranging from a low of 802 to a high of 1,012.<sup>1</sup>

### **Dispute Resolutions and Settlements**

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During this step of the process, 291 cases (38% of all charge investigations completed) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 260 days of settlement conferences in cases where a complaint was issued. These efforts resulted in voluntary settlements in 146 cases (59% of those cases in which settlement efforts concluded), compared to only 97 cases subsequently assigned for hearing.

PERB's high success rate in mediating voluntary settlements is, in part, attributable to the tremendous skill and efforts of its staff, but also requires commitment by the parties involved to look for solutions to problems. As the efforts of PERB's staff demonstrate, voluntary settlements are the most efficient way of resolving disputes, as well as providing an opportunity for the parties to improve their relationships. PERB looks forward to continuing this commitment to voluntary dispute resolution.

### **Administrative Adjudication**

Complaints that are not resolved through voluntary mediation are sent to the Division of Administrative Law for an evidentiary hearing before an ALJ. During this fiscal year, the workload of the Division remained relatively consistent with the workload and productivity since the effective date of PERB's jurisdiction over the MMBA in July 2001. In 2007-2008, ALJs issued 44 proposed decisions, averaging 94 days to render a decision. Of these 44 proposed decisions issued, 21 were appealed to the Board, and 23 became final.

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<sup>1</sup> The average number (842) is calculated after discounting for the 256 nearly identical charges filed by a single group of employees in 2004-2005 and for a similar set of filings in 2001-2002.

## **Board Decisions**

Proposed decisions issued by the Division of Administrative Law and dismissals of unfair practice charges are subject to review by the Board itself. During the fiscal year, the Board issued 65 decisions and also considered 28 requests for injunctive relief. (A summary of injunctive relief requests filed compared to prior years is included in the Appendices at page 23.)

## **Litigation**

Fiscal year 2007-2008 culminated in court litigation<sup>2</sup> consistent with—and even slightly higher than—2006-2007 for PERB. Specifically, more than 90 litigation-related assignments were completed by PERB attorneys, and a total of 22 litigation cases, including new and continuing cases, were handled during the 2007-2008 fiscal year. (A summary of these cases is included in the Appendices, beginning at page 56.)

## **Representation Activity**

For the fiscal year, 130 new representation petitions were filed, an increase of 29 when compared to the prior year. The fiscal year total includes 47 recognition petitions, 10 severance requests, 3 petitions for certification, 11 decertification petitions, 12 requests for amendment of certification, 46 unit modification petitions, and one fair share fee rescission petition.

Election activity increased significantly from the prior year, to a level more consistent with the three years prior to 2006-2007. There were 15 elections conducted by PERB during the fiscal year, including 11 decertification elections and 4 fair share fee rescission elections. In addition, the number of employees eligible to participate in these elections (more than 50,000) far exceeded the total numbers of eligible voters involved in PERB elections over the four previous years.

## **Mediation/Factfinding/Arbitration**

During the fiscal year, PERB also received 125 mediation requests and 26 factfinding requests. The number of mediation requests declined sharply from the prior year, with 80 fewer filed, but the number of factfinding requests remained constant (25 requests were filed in 2006-2007). There was also one request for a list of arbitrators submitted to PERB this year, compared to none the prior year.

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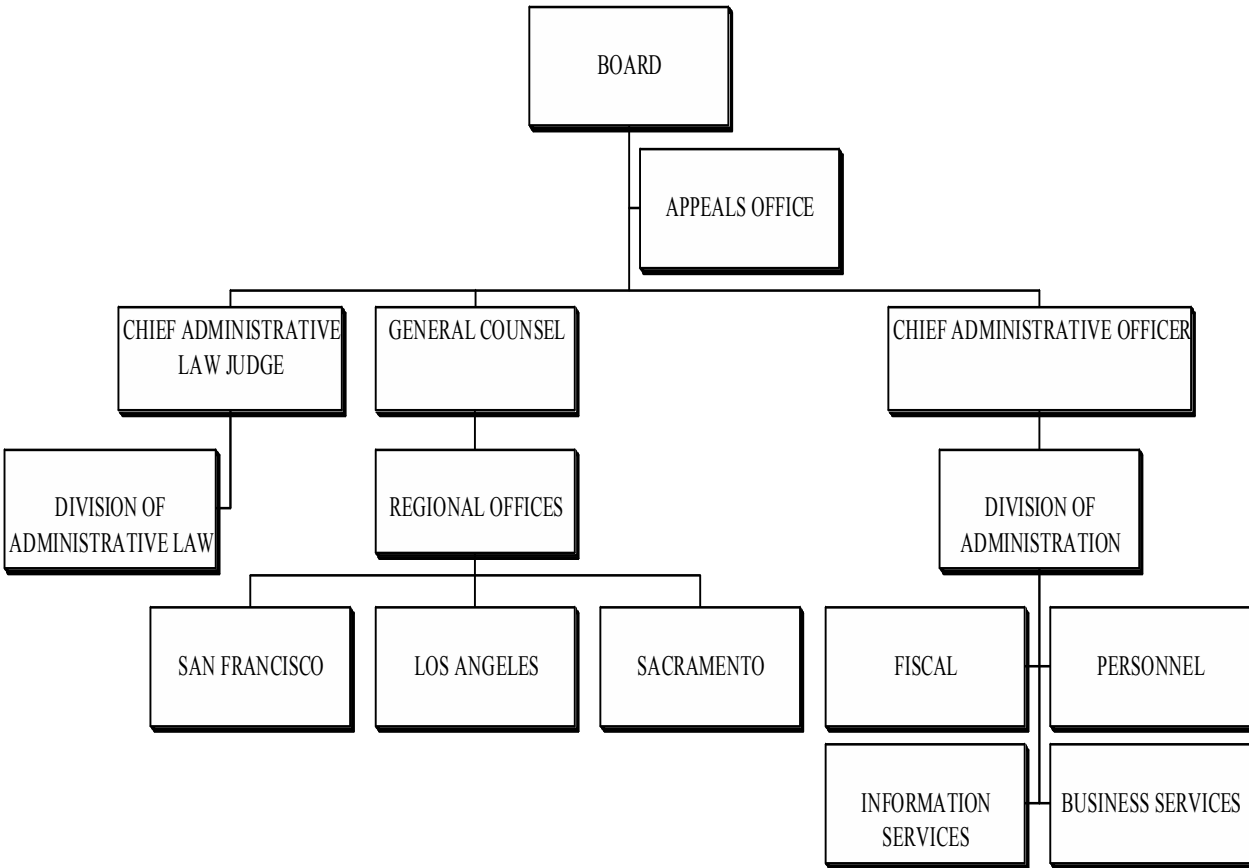
<sup>2</sup> PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts in the State, including the California Supreme Court. Litigation consists of preparing legal memoranda, court motions, points and authorities, briefs, stipulations, judgments, orders, etc., as well as making court appearances.

## **Compliance**

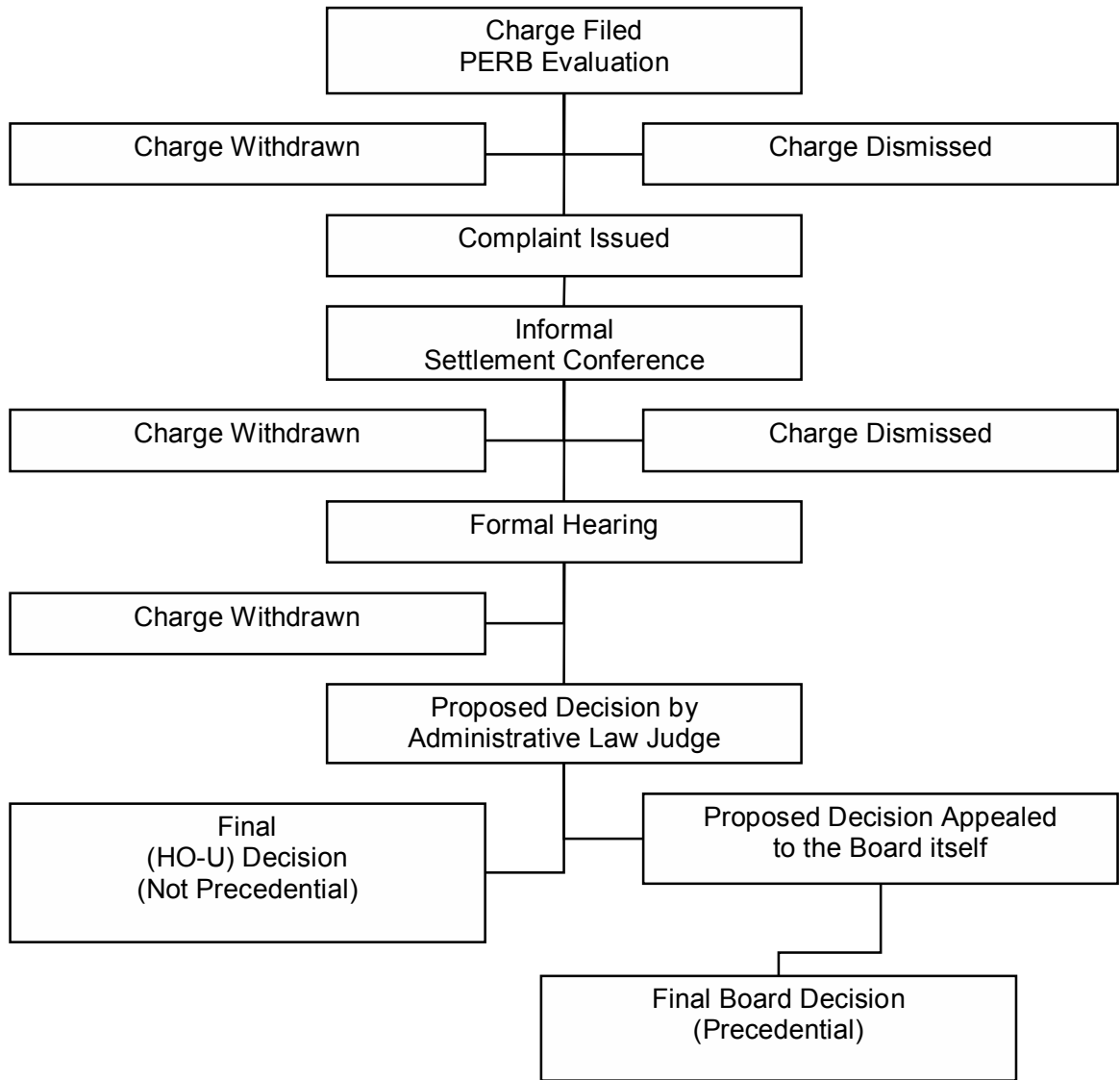
PERB staff also commenced compliance proceedings regarding 15 unfair practice cases where a final decision resulted in a finding of a violation of the applicable statute. The number of new compliance cases was consistent with the prior year's activity, as 17 new compliance proceedings commenced in 2006-2007.

## **V. APPENDICES**

**PUBLIC EMPLOYMENT RELATIONS BOARD**  
**Organizational Chart**



## UNFAIR PRACTICE CHARGE FLOW CHART





## 2007-2008 UNFAIR PRACTICE CHARGE STATISTICS

### **I. Unfair Practice Charges Filed by Region**

<b>Region</b>	<b>Total</b>
Sacramento	256
San Francisco	244
Los Angeles	316
<b>Total</b>	<b>816</b>

### **II. Unfair Practice Charges Filed by Act**

<b>Act</b>	<b>Total</b>
Dills Act	137
EERA	313
HEERA	79
MMBA	261
TEERA	2
Trial Court Act	14
Court Interpreter Act	7
Non-Jurisdictional	3
<b>Total</b>	<b>816</b>

### **III. Prior Year Workload Comparison: Charges Filed**

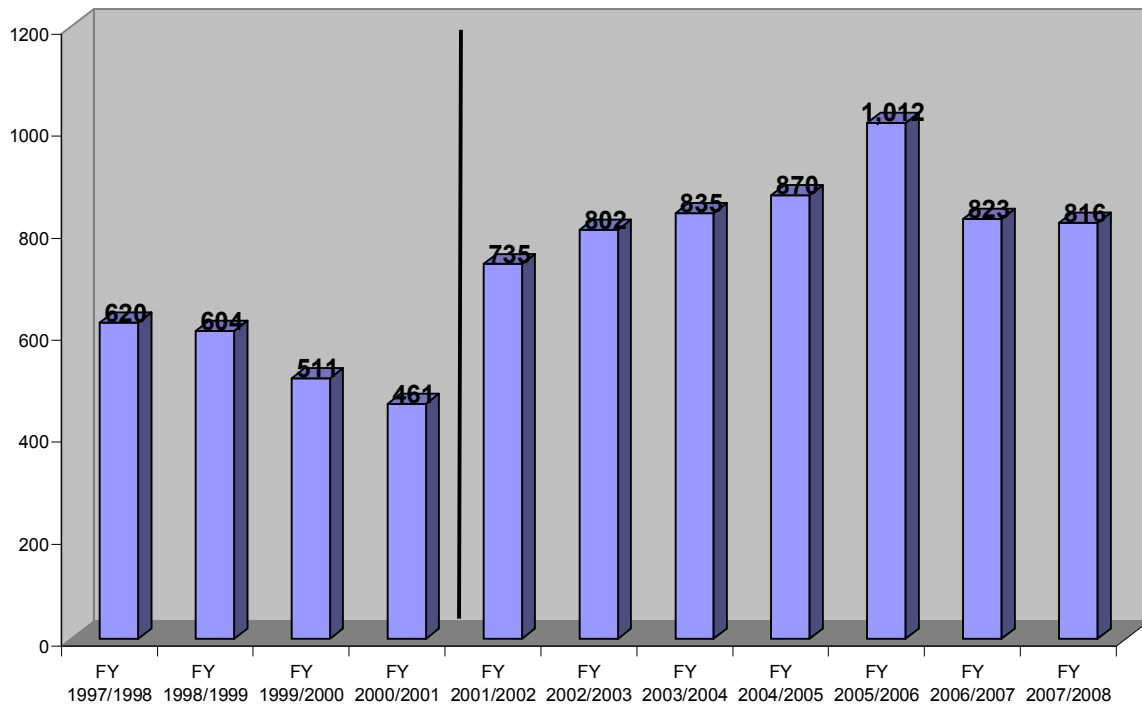
	<b>2004/2005</b>	<b>2005/2006</b>	<b>2006/2007</b>	<b>2007/2008</b>	<b>4-Year Average</b>
<b>Total</b>	870 <sup>3</sup>	1012	823	816	880

### **IV. Unfair Practice Charge Dispositions by Region**

	<b>Charge Withdrawal</b>	<b>Charge Dismissed</b>	<b>Complaint Issued</b>	<b>Total</b>
Sacramento	89	67	78	234
San Francisco	88	99	73	260
Los Angeles	114	87	65	266
<b>Total</b>	<b>291</b>	<b>253</b>	<b>216</b>	<b>760</b>

<sup>3</sup> The number of charges shown for 2004-2005 is adjusted to discount 256 identical charges filed by a single group of employees; the raw number of filings was 1126.

## Unfair Practice Charge Filings



Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). Also, in Fiscal Year 2004-2005, the total number of charges filed (1126) was adjusted to discount 256 nearly identical charges filed by a single group of employees and in Fiscal Year 2001-2002 the total number, 935, was reduced by 200 for a similar set of filings (see p. 15).

## 2007-2008 REQUESTS FOR INJUNCTIVE RELIEF (IR)

### I. Prior Year Workload Comparison: IR Requests Filed

	2004/2005	2005/2006	2006/2007	2007/2008	4-Year Average
<b>Total</b>	12	23	16	28	20

## 2007-2008 REPRESENTATION CASE ACTIVITY

### I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Request for Recognition	47	45
Severance	10	9
Petition for Certification	3	2
Decertification	11	12
Amended Certification	12	14
Unit Modification	46	42
Organizational Security	1	4
Arbitration	1	1
Mediation	125	327
Factfinding	26	30
Compliance	15	20
<b>Totals</b>	<b>297</b>	<b>506</b>

### II. Prior Year Workload Comparison: Cases Filed

	2004-2005	2005-2006	2006-2007	2007-2008	4-Year Average
Fiscal Year	361	360	348	297	342

### III. Elections Conducted

Amendment of Certification	0
Decertification	11
Fair Share Fee Reinstatement	0
Fair Share Fee Rescission	4
Representation	0
Severance	0
Unit Modification	0
<b>Total</b>	<b>15</b>

## *Elections Conducted: 7/1/2007 - 6/30/2008*

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Outcome</i>	<i>Unit Size</i>
<i>Decertification</i>		<i>Subtotal:</i>	<i>11</i>	
LA-DP-00358-E	LOS ANGELES COUNTY OFFICE OF EDUCATION	All Classified Less Other Group	SEIU Local 99	918
LA-DP-00357-E	SOUTHWESTERN CCD	Wall Certificated	Southwestern College EA	1285
SA-DP-00224-M	CARMICHAEL RECREATION & PARK DISTRICT	General	No Representation	13
LA-DP-00359-E	PASADENA AREA CCD	Wall Certificated	Pasadena CCD Faculty Association	1281
SF-DP-00269-E	ALAMEDA CITY USD	Operations, Support Services	California School Employees Association	116
SF-DP-00271-M	ALAMEDA CO WATER DISTRICT	Wall Classified	Operating Engineers Local 3	121
SF-DP-00272-M	MARINA COAST WATER DISTRICT	Wall Classified	No Representation	23
SF-DP-00273-E	LOS GATOS-SARATOGA JtUnHSD	Wall Classified	No Representation	102
SA-DP-00225-M	SAN JOAQUIN CO MOSQUITO & VECTOR CONTROL	General	San Joaquin Co Mosquito Employees Assn	23
SA-DP-00226-E	LOS RIOS CCD	Operations, Support Services	SEIU Local 1021	212
LA-DP-00362-E	PASADENA AREA CCD	Security	Pasadena City College PO's Association	12
<i>Organizational Security - Rescission</i>		<i>Subtotal:</i>	<i>4</i>	
SA-OS-00139-M	COUNTY OF SUTTER	Professional	Fair share not rescinded	233
SA-OS-00138-M	COUNTY OF SUTTER	General	Fair share not rescinded	342
SA-OS-00140-S	STATE OF CALIFORNIA	Administrative, Financial & Staff Services	Fair share not rescinded	44187
LA-OS-00217-E	SOUTHWESTERN CCD	Wall Certificated	Fair share not rescinded	1333
<i>Total Elections:</i>		15		

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1823a-H	California Faculty Association v. Trustees of the California State University	The Board issued PERB Decision No. 1823-H on February 23, 2006, finding that the Trustees of the California State University violated HEERA by conditioning agreement of the parties' memorandum of understanding on the waiver of a statutory right. The Court of Appeal issued a published decision directing the Board to vacate its decision and to enter a new and different order denying the California Faculty Association's charge. ( <u>Board of Trustees of California State University v. Public Employment Relations Bd.</u> (2007) 155 Cal.App.4th 866.) The appellate decision became final.	The Board vacated Decision No. 1823-H.
1917-M	Faith Langlois-Dul, et al. v. Service Employees International Union, Local 715	The charging party appealed charge dismissal claiming she did not receive warning letter prior to dismissal of charge.	The Board found good cause to remand the case for further investigation and processing.
1918-S	Michael Menaster v. Union of American Physicians & Dentists	An employee alleged that his union failed to meet its duty of fair representation.	The Board upheld the Board agent's partial dismissal, finding that the charging party did not have standing to make some of the allegations. The Board also found that other allegations related to issues outside of PERB's jurisdiction, were untimely, or failed to state a prima facie case.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1919-M	Daniel James Treas v. Inlandboatmans Union of the Pacific	The charging party alleged that the union violated its duty of fair representation by failing to secure his sick leave and lunch time pay.	The Board upheld the Board agent's dismissal. The charging party did not provide enough information for the Board to determine if a violation occurred.
1920-M	Jurupa Community Services District Employees Association v. Jurupa Community Services District	The charging party alleged that the Jurupa Community Services District violated the MMBA by terminating the employment of James Caldaronello in retaliation for his filing a grievance.	The Board found that the district did discharge Caldaronello in retaliation for his filing a grievance because there was sufficient evidence that the termination was motivated by anti-union animus.
1921	California School Employees Association & its Chapter 407 v. Desert Community College District	The charge alleged the district interfered with employee rights when it directed the union to delete a union meeting agenda item to discuss the district board election and threatened employees with discipline.	The Board held the district's conduct interfered with employee rights.
1922	Charles E. Ulmschneider v. Los Banos Teachers Association	The charge alleged the union breached its duty of fair representation by failing to prevent the district from violating the collective bargaining agreement and by declining to advance charging party's grievance.	The Board affirmed the dismissal of the charge.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1923-S	William F. Horspool v. State of California (Department of Corrections & Rehabilitation)	The charge alleged that the State of California (Department of Corrections & Rehabilitation) violated the Dills Act by retaliating against charging party for his protected activities, interfering with his right to engage in protected activities, and by engaging in bad faith surface bargaining.	The Board found the Board agent's dismissal to be free of prejudicial error.
1924	Gregory K. Mandell v. San Leandro Unified School District	The Board affirmed the dismissal by a Board agent of an unfair practice charge alleging the district discriminated against the charging party for filing a grievance.	The Board held the dismissal was appropriate because the charging party failed to establish a "nexus" between the adverse action and the protected conduct.
1924a	Gregory K. Mandell v. San Leandro Unified School District	The Board denied the charging party's request for reconsideration of the dismissal of his unfair practice charge.	The Board held the charging party failed to meet the standard for reconsideration because the charging party failed to establish either the decision contained prejudicial errors of fact or there was newly discovered evidence which was not previously available.
1925	Delano Union Elementary School District v. Delano Elementary Teachers Association	The Board granted the district's request to withdraw both its exceptions to a partial dismissal and the underlying unfair practice charge.	The Board held the withdrawal of the district's exceptions to a partial dismissal and the underlying charge was in the best interests of the parties and consistent with the purposes of EERA.



## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1926-H	California Faculty Association v. Trustees of the California State University	The complaint alleged that CSU violated HEERA by unilaterally implementing a computer use policy at its Monterey Bay campus and that CSU bypassed the union and dealt directly with unit employees in implementing the computer use policy at Monterey Bay.	The Board dismissed the unfair practice charge and complaint holding that the decision to implement computer use policies implicated a fundamental managerial prerogative and fell outside the scope of representation.
1927-M	Paul Mauriello v. Bay Area Air Quality Management District	The Board denied the request for joinder by the charging party's former representative, Peter M. Rogosin (Rogosin). The Board granted the charging party's request to withdraw both his exceptions and the underlying unfair practice charge.	The Board held Rogosin lacked standing to file an application for joinder. In addition, the Board held Rogosin lacked an interest related to the subject matter of the unfair practice charge at issue. Accordingly, the Board denied Rogosin's request for joinder. Last, the Board held the withdrawal of the charging party's appeal of a proposed decision and the underlying charge was in the best interests of the parties and consistent with the purposes of the MMBA and granted the charging party's request for withdrawal.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1928	Joseph Doherty v. San Jose/Evergreen Community College District / James O'Neil v. San Jose/Evergreen Community College District	The Board dismissed a charge in which the charging parties alleged they were retaliated against by the district for seeking and receiving the assistance of the San Jose/Evergreen Faculty Association, American Federation of Teachers, Local 6157.	Since the district did not exert a significant degree of control over the terms and conditions of the charging parties' employment, the Board held there was no joint employer relationship between the Consortium and the district. Because the underlying retaliation charge was based solely on the alleged acts of certain Consortium employees, the lack of a joint employer relationship was fatal to the charging parties case.
1929	United Teachers of Los Angeles v. Los Angeles Unified School District	The charging party alleged retaliation against two teachers.	The Board dismissed the charge finding the charging party did not demonstrate the charge was timely filed.
1930	N. Ernest Kettenring v. Los Angeles Unified School District	The charging party alleged that a school district retaliated against him by disciplining him because of his union activities.	The charging party failed to prove a nexus between his protected activity and the school district's adverse actions.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1931-I	California Federation of Interpreters/ TNG/CWA v. Santa Cruz County Superior Court	In regards to the partial dismissal, the charge alleged that the Santa Cruz County Superior Court violated the Court Interpreter Act by the following acts: (1) giving independent contractors priority for assignments over employees, in violation of Section 71802(c)(1); (2) hiring non-certified/registered independent contractors despite the availability of certified and registered contractors for the same work, in violation of Section 71802(d); and (3) retaliating against bargaining unit employees for their exercise of protected rights, in violation of Section 71805(f).	The Board affirmed the Board agent's partial dismissal because the allegations were untimely.
1932-M	IFPTE, Local 21, AFL-CIO v. City & County of San Francisco (International Airport)	The charge alleged the employer violated the MMBA by unilaterally reassigning an employee to a different project.	The Board affirmed the charge dismissal finding the charge did not demonstrate a change in policy.
1933-H	Barbara S. Chapman and Christopher Druzgalski v. California Faculty Association	The charging parties alleged that the union interfered with employee rights and breached its duty of fair representation.	The Board upheld the Board agent's dismissal, finding that the charging parties' allegations were untimely filed.
1934	Samwel Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO	The charging party alleged the union breached its duty of fair representation by abandoning the appeal of his performance evaluation.	The charge was dismissed because charging party failed to demonstrate the charge was timely filed.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1935	Charles E. Ulmschneider v. Los Banos Unified School District	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged the employer violated EERA by conducting “unscheduled” and “unplanned” meetings with the charging party and by denying him representation during these meetings.	The Board held the charging party did not have a right to representation during these meetings because they were not investigatory in nature. The Board further held that even if the charging party was entitled to representation, he did not have the right to demand a specific union representative.
1936	Gary Lee Schoessler v. Yuba Community College District	The charge alleged that the Yuba Community College District violated EERA by deciding not to renew Schoessler’s contract in retaliation for commenting on and participating in a disciplinary process involving another district employee.	The Board affirmed the Board agent’s dismissal finding that the district never severed the employer-employee relationship by offering a job as obligated under Education Code section 87458.
1937-M	Commerce City Employees Association v. City of Commerce	The charge alleged that a city unlawfully and unilaterally changed the parties’ grievance procedure in violation of the MMBA.	The Board affirmed the Board agent’s dismissal finding the charging party failed to state a prima facie case that the city unilaterally changed the grievance procedure in violation of the MOU and local rules.
1938-M	Michael David Wilson v. County of Plumas	The charging party, a bailiff, alleged the county entered into an illegal contract with the superior court and failed to provide representation for the correctional officer/bailiff position.	The Board affirmed the charge dismissal on the basis of lack of standing.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1939-M	AFSCME Council 57, Local 146 v. Sacramento Housing & Redevelopment Agency	The charge alleged the employer unilaterally assigned new or different duties to unit members without meeting and conferring	The Board affirmed the partial charge dismissal finding the assignment of duties was closely related to existing duties.
1940-M	Darrell Fisher v. Stationary Engineers Local 39	The charging party alleged that his union violated its duty of fair representation.	The Board agent's dismissal was upheld on the basis the charge was untimely filed.
1940a-M	Darrell Fisher v. Stationary Engineers Local 39	The charging party filed a request for reconsideration of PERB Decision No. 1940-M	The Board denied the request as the charging party failed to show that the Board's decision contained prejudicial errors of fact, nor did he present newly discovered evidence.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1941	Long Beach Community College District Police Officers Association v. Long Beach Community College District/City of Long Beach and Inland Personnel Council	This case came before the Board on exceptions by the district to an ALJ's proposed decision. In the prior Board decision in this case, <u>Long Beach Community College District</u> (2003) PERB Decision No. 1568, the Board reversed the Board agent's dismissal of the case. In reversing the dismissal, the Board held that the phrase "contract out work" in the management rights clause of the collective bargaining agreement did not constitute an express waiver of the right to bargain over contracting out work. Following the Board's order, the ALJ held a hearing to determine whether the association had by its conduct clearly and unmistakably waived its right to bargain over the district's contracting out of police services to the City of Long Beach and the resulting layoff of all association members.	The Board reversed the prior <u>Long Beach Community College District</u> (2003) PERB Decision No. 1568 and reinstated <u>Barstow Unified School District</u> (1996) PERB Decision No. 1138 holding that the phrase "contract out work" in the management rights clause of the collective bargaining agreement constituted an express waiver of the right to bargain over contracting out work. The Board also found that while the association waived the right to bargain over the decision to contract out work it did not waive the right to bargain the effects of the decision.
1942-C	Service Employees International Union Local 535 v. Fresno County Superior Court	The charge alleged that a court unlawfully and unilaterally changed the job description for newly hired court reporters in violation of the Court Interpreter Act when it required them to provide Realtime court reporting services.	The Board affirmed the ALJ's dismissal on the basis that the employer's decision to revise the job description was excluded from the scope of representation pursuant to Court Interpreter Act section 71634(b)(5) as a delivery of court services and where the evidence showed such decision was made for the purposes stated in the statute for justifying the exclusion.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1943-M	Sacramento County Attorneys Association v. County of Sacramento/Sacramento County Professional Accountants Association v. County of Sacramento	The charge alleged that the County of Sacramento violated the MMBA by refusing to bargain in good faith changes to the Retiree Health Insurance Program (RHIP). Specifically, the county changed the eligibility to receive medical offset payments for future retirees in the RHIP without first bargaining said change with the associations. While not within the four corners of the complaint, the association also alleged that the county refused the associations' demand to bargain the RHIP during negotiations.	The Board found that the subject falls within the scope of representation because a current employee's eligibility for future retirement benefits directly impacts an employee's compensation package and is therefore related to wages. The Board further found that the County of Sacramento unilaterally changed the eligibility criteria for retirement healthcare for future retirees.
1944-M	South Placer Fire Administrative Officers Association v. South Placer Fire Protection District	The Board affirmed the dismissal of an unfair practice charge in which the association alleged the employer unilaterally removed work from a bargaining unit represented by the association.	The Board held the matter was not timely filed.
1945	California Teachers Association/NEA v. Journey Charter School	The charging party alleged that three charter school teachers were dismissed in retaliation for their expressed intent to seek union representation and for sending out a letter to charter school parents.	The Board held the charging party failed to prove a nexus between the charter school's decision to terminate the teachers and their protected activity and that a letter to parents was not protected activity under EERA.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1946	Eric M. Moberg v. San Mateo County Office of Education	The charging party alleged that he was issued a reprimand in retaliation for his protected activity.	The Board upheld the Board agent's dismissal finding that charging party failed to state a prima facie case of retaliation.
1947-H	Sak Onkvisit v. California Faculty Association	The charge alleged that the California Faculty Association violated HEERA by breaching its duty of fair representation.	The Board found the charge untimely.
1948	International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. San Francisco Unified School District	The charge alleged that the San Francisco Unified School District violated EERA by failing and refusing to negotiate in good faith by unilaterally repudiating an obligation to participate in binding interest arbitration under the City of San Francisco Charter and by failing and refusing to confer on district classified employees wages determined through city interest arbitration proceedings for the same classifications.	The Board found that the fact that the charter includes provisions for employment benefits that are applicable to district employees does not undermine the conclusion that EERA preempts contrary charter provisions providing for collective bargaining procedures.
1949-H	Academic Professionals of California v. Trustees of the California State University	The Board affirmed the dismissal of an unfair practice charge alleging that CSU violated HEERA when it paid an arbitration award to the Academic Professionals of California (APC) in the form of a one-time payment, rather than an increase in base pay.	The Board held the doctrine of judicial estoppel precluded APC from asserting to PERB that CSU had not satisfied the judgment after APC acknowledged in a Notice of Satisfaction to the Los Angeles County Superior Court that "[t]he judgment is satisfied in full."



## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1950-M	Pamela Neronha v. IBEW Local 1245	The charge alleged that IBEW Local 1245 violated the MMBA by failing to properly represent charging party.	The appeal failed to state the grounds for the issues raised and, thus, failed to comply with the requirements of PERB Regulation 32635. The Board, therefore, dismissed the appeal.
1951	Patricia Ann O'Neil v. Santa Ana Unified School District	The charge alleged that the district violated EERA by discriminating against charging party when it transferred her to another school site, interfered with her protected rights, and unilaterally changed the transfer policy.	The Board deferred to an arbitrator's award where the issues were presented and considered by the arbitrator. The Board noted that the charging party failed to demonstrate that the arbitrator's award was palpably wrong.
1952	Sharika Gregory v. AFSCME Council 57	The charging party appealed a Board agent's dismissal.	The Board found that due to a postal delay beyond charging party's control, she did not receive the Board agent's warning letter until after her charge had been dismissed. Finding good cause, the Board remanded the case to allow the charging party to file an amended charge.
1953-M	AFSCME Local 146 v. Carmichael Recreation & Park District	In these consolidated cases, AFSCME alleged that Carmichael Recreation & Park District violated the MMBA by: (1) interfering with protected employee rights, (2) discriminating against an employee for engaging in protected activity, and (3) refusing to provide requested information.	The Board found that the ALJ properly dismissed the case.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1953a-M	AFSCME Local 146 v. Carmichael Recreation & Park District	This case was before the Board on a request for reconsideration by Penny Kelley of the Board's decision in <u>Carmichael Recreation &amp; Park District</u> (2008) PERB Decision No. 1953-M ( <u>Carmichael</u> ). In <u>Carmichael</u> , the Board dismissed AFSCME's charges of interference and retaliation and found that the Carmichael Recreation & Park District did not deny the union information that was necessary and relevant to its representational duties.	The Board denied the request because Kelley did not have standing.
1954	Berkeley Council of Classified Employees v. Berkeley Unified School District	The charge alleged that the Berkeley Unified School District violated EERA by engaging in surface bargaining.	The Board affirmed the dismissal of an unfair practice charge alleging that the district violated EERA by unilaterally changing the release time policy.
1955-H	California Faculty Association v. Trustees of the California State University (San Diego)	The Board affirmed the proposed decision by an ALJ in which the charging party alleged the California State University, San Diego (CSUSD) violated HEERA when it unilaterally discontinued staffing remedial mathematics and writing classes.	The Board held CSUSD did not unlawfully contract out work because the decision to discontinue staffing remedial mathematics and writing classes was made independent of its decision to contract with a third party to teach these classes.
1956-M	Lisa Marriott, et al. v. Service Employees International Union Local 1292	The charge alleged that an employee organization violated employees' rights under the MMBA to choose their own representative.	The Board affirmed the Board agent's dismissal because charging party failed to state a prima facie case that the structural change to the employee organization had a substantial affect on the employer-employee relationship.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1957-C	Stationary Engineers Local 39 v. Tehama County Superior Court	The charge alleged that a court violated the Court Interpreter Act by failing to respond to an employee organization's recognition petition on the ground that its local rules prohibited the same employee organization from representing both managerial and non-managerial employees.	The Board found that the Court Interpreter Act, which permits restrictions on management and confidential employees from representing any employee organization that represents other employees of the court, does not otherwise limit the right of employees to be members of an employee organization. Accordingly, the Board held that the court's refusal to recognize the petition pursuant to its local rules violated the Court Interpreter Act.
1958	Grossmont-Cuyamaca Community College District v. Grossmont-Cuyamaca Community College District Administrators' Association	An EERA representation petition was filed by a employee organization. The district disputed the appropriateness of the proposed unit, claiming 13 of the proposed unit positions were managerial, confidential or both.	On appeal, the district challenged the Board agent's finding as to eight positions found not to be managerial or confidential. The Board held that district demonstrated that four of the eight positions were managerial and thus not appropriate for inclusion into the proposed unit.
1959	Jennifer Marion Franz v. Sacramento City Teachers Association	The charging party alleged that the union breached its duty of fair representation by failing to provide her with information related to her grievances and misrepresenting that a state mediator was present at a grievance hearing.	The Board found that all but the misrepresentation allegation were untimely and that the evidence failed to show a misrepresentation by the union. The Board dismissed the complaint.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1960-M	South Placer Fire Administrative Officers Association v. South Placer Fire Protection District	The charging party alleged that the fire district breached its duty to meet and confer in good faith by failing to provide it with notice and an opportunity to bargain before removing the Fire Marshall classification from the bargaining unit.	The Board found that the fire district breached its duty to meet and confer by unilaterally removing the Fire Marshall classification from the bargaining unit.
1961-S	Steven R. Swan v. State of California (Department of Corrections & Rehabilitation)	The charging party alleged that the state discriminated against him and interfered with his rights under the Dills Act by denying his bids for assignments at a private hospital pursuant to a post and bid procedure contained in an agreement between the state and his union.	The Board upheld the Board agent's dismissal finding that participating in the contractual post and bid procedure was not protected activity under the Dills Act.
1962-M	Service Employees International Union, Local 707 v. County of Sonoma	The charging party alleged that the county breached its duty to meet and confer in good faith by unilaterally adopting a new policy of involuntarily placing an employee on unpaid leave status when there was a disputed ability to work under disability accommodations.	The Board reversed the ALJ's decision, which found that the county had breached its duty to meet and confer. The Board found no violation because the county's action did not deviate from its past practice in such cases and, therefore, dismissed the complaint.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1963	Louis DePace v. Los Angeles Unified School District	The Board affirmed the dismissal of an unfair practice charge in which De Pace, an employee of the Los Angeles Unified School District (LAUSD) and a member of the United Teachers of Los Angeles (UTLA), claimed LAUSD violated EERA, the Education Code, and the parties' collective bargaining agreement when LAUSD's new payroll system, among other things, failed to timely pay employees, issued inaccurate paychecks and failed to generate readable pay stubs.	The Board held the charge failed to state a prima facie case under EERA because the charging party failed to allege sufficient facts to demonstrate LAUSD either interfered with his exercise of protected rights or retaliated against him for exercising such rights. The Board further held that it did not have jurisdiction to review the claimed violations of the Education Code. Last, the Board held that since the charging party failed to establish LAUSD's conduct violated EERA, it lacked jurisdiction to address the contract violation.
1964	Louis DePace v. United Teacher of Los Angeles	The Board affirmed the dismissal of an unfair practice charge in which De Pace, an employee of the Los Angeles Unified School District (LAUSD) and a member of the United Teachers of Los Angeles (UTLA), claimed UTLA breached its duty of fair representation by declining to file a grievance on his behalf. De Pace claimed UTLA's actions violated EERA, the Education Code, and the parties' collective bargaining agreement.	The Board held the charge failed to state a prima facie that UTLA breached its duty of fair representation because the charging party failed to allege facts sufficient to demonstrate UTLA's conduct was arbitrary, discriminatory or made in bad faith. The Board further held that it did not have jurisdiction to review the claimed violations of the Education Code. Last, the Board held that since the charging party failed to establish UTLA's conduct violated EERA, it lacked jurisdiction to address the contract violation.

## 2007-2008 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1965	Sharika Gregory v. Oakland Unified School District	The charging party alleged her employment was terminated because she sought assistance from the union.	The Board found the charge timely filed and remanded the charge for issuance of a complaint.
1966-H	Edward Woolfolk v. American Federation of State, County and Municipal Employees, Local 3299	The parties requested that the Board allow them to withdraw the charge.	The Board agreed with the withdrawal because it was in the best interests of both parties.
1967-S	Union of American Physicians & Dentists v. State of California (Department of Corrections)	The charge alleged that the State of California (Department of Corrections) violated the Dills Act by changing the performance appraisal provision of a memorandum of understanding without negotiating the decision in violation of the Dills Act section 3159(c).	The Board adopted the ALJ's proposed decision dismissing the unfair practice charge.
1968-M	Orange County Professional Firefighters Association, IAFF Local 3631 v. Orange County Fire Authority	The Board dismissed an unfair practice charge in which the charging party alleged the Orange County Fire Authority violated the MMBA by unilaterally changing the procedure for modification of bargaining units under its local rules.	The Board held the matter was not timely filed.

## 2007-2008 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-366	Gregory K. Mandell v. San Leandro Unified School District	The Board denied the charging party's request to accept his late-filed fourth addendum to his appeal.	The Board held that parties to an unfair practice charge have a duty to carefully review all documents filed in connection with their case. Accordingly, a charging party's alleged late discovery of statements contained in a dismissal letter is insufficient to warrant a finding of good cause.
Ad-367-S	State of California and IT Bargaining Unit 22 and Service Employees International Union Local 1000, CSEA	A bargaining unit's Dills Act severance petition was opposed by the exclusive representative on the ground that the unit had submitted an insufficient number of signatures in support of severance. In support of its opposition to the petition, the exclusive representative stated that 300 unit members had signed "revocation cards" withdrawing their support for severance. The Board agent accepted the revocation cards and found that the unit's proof of support was insufficient.	On appeal, the Board held that PERB's proof of support regulations do not authorize the use of signature revocations. Accordingly, the Board vacated the Board agent's decision and remanded the case for a determination of the petition's sufficiency of support without consideration of the signature revocation cards.

## 2007-2008 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-368	Linda Irizarry Gold v. Los Angeles Unified School District	Employee filed a motion to re-open the record after her case was dismissed. Charging party mistakenly listed her witness on the notice of appearance form. As a result, the Board agent's warning letter was sent to the witness and charging party did not receive the warning letter before the charge was dismissed.	The Board found the request was more properly considered an appeal of the dismissal of her charge. The Board found good cause to excuse the late filed appeal and remanded the case to the General Counsel's Office to allow the charging party an opportunity to file an amended charge.
Ad-369	Samwel Osewe v. Long Beach Community College District	The charging party requested that the Board accept the late-filed appeal of the dismissal of his unfair practice charge.	The Board declined to accept charging party's late-filed appeal finding that charging party failed to provide a reasonable and credible explanation of how his illness prevented his prompt filing of the appeal.
Ad-370-H	University Professional and Technical Employees, CWA Local 8	The charge alleged that the university violated HEERA by denying an employee his right to union representation during two meetings with his supervisors. The Board agent dismissed the charge on the ground that the complaint failed to state a prima facie case.	The Board held that the employee organization's request to reopen the case after it had been dismissed and after the time to appeal had elapsed was an appeal of the dismissal. The Board further held that under PERB Regulation 32136, reasonable and credible good cause to excuse the late filing had not been shown. Accordingly, the Board affirmed the dismissal.



## 2007-2008 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-371-S	State of California and Peace Officers of California and California Statewide Law Enforcement Association	An employee organization that had appealed a Board agent's dismissal of its Dills Act unit modification petition for failure to demonstrate the requisite proof of support, submitted a request to withdraw its appeal.	The Board held that the request for withdrawal was in the best interests of the parties and consistent with the purposes of the Ralph C. Dills Act and granted the request.
Ad-372	Kern Community College District v. California School Employees Association & its Chapters 246, 336 & 617	This case came before the Board on appeal by the Kern Community College District that the Board excuse its late-filed appeal to a Board agent's dismissal.	The Board excused the late filing because the district's attorney served the appeal on the California School Employees Association & its Chapters 246, 336 & 617 (CSEA), but failed to file the document with PERB by either fax or personal service. Further, CSEA was not prejudiced by the late filing.
Ad-373	Marc Z. Katz v. Newport-Mesa Unified School District	Charging party argued that he did not timely file an appeal of the dismissal of his charge because he was traveling out of "personal necessity."	The Board denied charging party's request that his late-filed appeal of a Board agent's dismissal be considered finding that he failed to show good cause.

## 2007-2008 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-374	Lori Ann Body v. Compton Unified School District	The Board agent dismissed an employee's charge for failing to state a prima facie case that a school district violated EERA.	The Board held that the employee's request to accept additional documents, which was made after the time to appeal the dismissal elapsed, was an appeal of the dismissal. The Board further held that the charging party failed to demonstrate good cause pursuant to PERB Regulation 32136 to excuse the late filing.

## **2007-2008 DECISIONS OF THE BOARD**

### **JUDICIAL REVIEW REQUESTS**

<b>DECISION NO.</b>	<b>CASE NAME</b>	<b>DESCRIPTION</b>	<b>DISPOSITION</b>
There were no Requests for Judicial Review that were considered by the Board this fiscal year.			

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 525	Ira Eisenberg v. State of California (Employment Development Department)	Mr. Eisenberg filed a request for injunctive relief against the state alleging it violated the Dills Act by threatening him and other employees with adverse action for using the state's email system to distribute decertification petitions and fair share fee rescission materials.	Request denied.
I.R. 526	Sacramento County Deputy Sheriffs Association v. County of Sacramento	The union filed a request for injunctive relief against the county alleging it violated the MMBA by interfering with and dominating the union's ability to conduct business.	PERB staff directed to expeditiously process the underlying unfair practice charge in this matter. The Board reserves its decision-making authority regarding the request for injunctive relief at this time pending the conduct of a prompt informal settlement conference and, if appropriate, formal hearing before a PERB Administrative Law Judge.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 527	California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)	The union filed a request for injunctive relief against the state alleging it violated the Dills Act by engaging in bad faith bargaining.	Request denied.
I.R. 528	California Fish & Game Wardens' Association v. California Statewide Law Enforcement Association	The union (CA Fish & Game Wardens' Assn.) filed a request for injunctive relief against an affiliate union (Statewide Law Enforcement Assn.) alleging it violated the Dills Act by seizing membership dues.	Request denied.
I.R. 529	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	The union filed a request for injunctive relief against the state alleging it violated the Dills Act through implementation of its last, best, and final offer and by bargaining in bad faith.	Request withdrawn.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 530	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	The union filed a request for injunctive relief against the state alleging it violated the Dills Act through implementation of its last, best, and final offer and by bargaining in bad faith and interfering with and retaliating against the union's protected activity.	Request denied.
I.R. 531	Kern County Probation Officers' Association v. County of Kern	The union filed a request for injunctive relief against the county alleging it violated the MMBA by unilaterally implementing certain terms of its last, best, and final offer and by bargaining in bad faith and interfering with the union's collective bargaining rights.	Request withdrawn.
I.R. 532	Kern County Probation Officers' Association v. County of Kern	The union filed a request for injunctive relief against the county alleging it violated the MMBA by unilaterally implementing certain terms of its last, best, and final offer and by bargaining in bad faith and interfering with the union's collective bargaining rights.	Request denied.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 533	City of Hemet v. Hemet City Fire Fighters Association, Local 2342	The city filed a request for injunctive relief against the union alleging it violated the MMBA by unilaterally changing the grievance procedure in the parties' memorandum of understanding.	Request withdrawn.
I.R. 534	Alex Hernandez v. SEIU Local 1000	Mr. Hernandez filed a request for injunctive relief against the union alleging it violated the Dills Act by commencing disciplinary procedures against him in retaliation for his protected activity.	Request denied.
I.R. 535	Amalgamated Transit Union Local 1277 v. Riverside Transit Agency	The union filed a request for injunctive relief against the agency alleging it violated the MMBA by terminating a union steward in retaliation for his protected activity.	Request denied.
I.R. 536	Los Angeles Unified School District v. United Teachers of Los Angeles	The district filed a request for injunctive relief against the union alleging it violated EERA by condoning unit members' participation in certain activities to protest the district's payroll problems.	Request denied.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 537	Sonoma County Law Enforcement Association v. County of Sonoma	The association filed a request for injunctive relief against the county alleging it violated the MMBA by failing to negotiate in good faith on an array of issues, including healthcare benefits.	Request denied.
I.R. 538	Alex Hernandez v. SEIU Local 1000	Mr. Hernandez filed a request for injunctive relief against the union alleging it violated the Dills Act by suspending his union membership in retaliation for his protected activity.	Request denied.
I.R. 539	SEIU Local 1000 v. State of California (Department of Developmental Services & Office of Protective Services)	The union filed a request for injunctive relief against the state alleging it violated the Dills Act by making a unilateral change concerning the dismantling of security towers at one of the state's secure treatment facilities.	Request withdrawn.
I.R. 540	SEIU Local 1000 v. State of California (Department of Developmental Services & Office of Protective Services)	The union filed a request for injunctive relief against the state alleging it violated the Dills Act by making a unilateral change concerning the dismantling of security towers at one of the state's secure treatment facilities.	Request denied.



## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 541	California Federation of Interpreters Local 39521 v. Los Angeles County Superior Court	The union filed a request for injunctive relief against the Court alleging it violated the Court Interpreter Act by interfering with the union's right to release time and retaliating against a union officer for her protected activity.	Request denied.
I.R. 542	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	The union filed a request for injunctive relief to require the state to return to the bargaining table, post-implementation of the state's last, best, and final offer, due to alleged "changed circumstances."	Request denied.
I.R. 543	Charles E. Ulmschneider v. Los Banos Unified School District	Mr. Ulmschneider filed a request for injunctive relief to require the district to reinstate him to his teaching position.	Request denied.
I.R. 544	Orange County Employees' Association v. County of Orange	The union filed a request for injunctive relief to enjoin the county from making available to the media certain requested records.	Request withdrawn.
I.R. 545	Alex Hernandez v. SEIU Local 1000	Mr. Hernandez filed a request for injunctive relief to require the union to restore his union membership.	Request denied.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 546	Regents of the University of California v. AFSCME Local 3299	The university sought to enjoin planned strike activity at the university medical centers by two bargaining units represented by the union: the Service Unit and the Patient Care Technical Unit.	Request withdrawn.
I.R. 547	AFSCME Local 3299 v. Regents of the University of California	The union filed a request for injunctive relief to address alleged bad-faith conduct by the university.	Request withdrawn.
I.R. 548	Regents of the University of California v. AFSCME Local 3299	The university sought to enjoin the union from a planned two-day strike at the university's medical centers by two bargaining units represented by the union: the Patient Care Technical Unit and the Service Unit.	Request granted. The Board granted this request on May 28, 2008 exclusively with respect to the Patient Care Technical Unit; the matter was subsequently withdrawn.
I.R. 549	Los Angeles Unified School District v. United Teachers of Los Angeles	The district sought to enjoin a union planned event, which was to consist of a one-hour job action at district schools from 8 a.m. to 9 a.m.	Request denied.
I.R. 550	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	The union filed a request for injunctive relief to address alleged conduct by the state relative to local and side-letter agreements.	Request denied.

## 2007-2008 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 551	California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation, Department of Personnel Administration)	The union filed a request for injunctive relief to address alleged conduct by the state related to closure of two of the state's juvenile facilities.	Request denied.
I.R. 552	San Bernardino Public Employees Association v. City of Rancho Cucamonga	The union sought an injunction to prevent the city from implementing certain local-rule provisions and to require the city to recognize the union as the exclusive representative of a particular bargaining unit.	Request denied.

## 2007-2008 LITIGATION CASE ACTIVITY

1. *City of San Jose v. International Association of Firefighters Local 230*, California Court of Appeal, Sixth Appellate District, Case No. H032097, Santa Clara County Superior Court Case No. 06CV075858 (PERB Case No. N/A). Issue: Does PERB have exclusive jurisdiction to decide violations of charter provisions pertaining to employer-employee relations? PERB filed an application for and was granted intervention in May 2007. PERB subsequently filed a motion to dismiss and supporting points and authorities. In June 2007, the superior court granted PERB's motion to dismiss the matter in its entirety. Following City's appeal to the Court of Appeal, briefing commenced in March 2008; briefing underway as of June 30, 2008.
2. *Service Employees International Union (SEIU), Local 790, AFL-CIO v. County of San Joaquin*, San Joaquin County Superior Court Case No. CV026530 (PERB Case No. SA-CE-348-M). Issue: Did County violate the MMBA when it contracted out for services? PERB filed an application for and was granted intervention in September 2005. PERB subsequently filed a motion to dismiss in part and supporting points and authorities. PERB filed its reply to the opposition in December 2005. On December 13, 2005, the court granted PERB's motion to dismiss plaintiff's second cause of action and the remaining allegations were placed in abeyance. PERB completed its processes and closed SA-CE-348-M in October 2007 when the ALJ's proposed decision in the matter became final.
3. *International Association of Firefighters Local 188 (IAF), AFL-CIO v. Public Employment Relations Board, et al.*, California Court of Appeal, First Appellate District, Case No. A108875, Contra Costa County Superior Court Case No. N050232 (PERB Case No. SF-CE-157-M). Issue: Did PERB err in Decision No. 1720-M (adopting a Board agent's dismissal of IAF's charge alleging layoffs are a negotiable subject of bargaining)? The superior court ruled in July 2006 that IAF could not appeal PERB's decision declining to issue a complaint. Following IAF's appeal to the Court of Appeal, briefing commenced in October 2007; briefing complete as of February 2008.
4. *Union of American Physicians and Dentists (UAPD) v. State of California, Department of Corrections and Rehabilitation (CDCR)*, Sacramento County Superior Court Case No. 05CS00555 (PERB Case No. SF-CE-228-S). Issue: Did CDCR violate the Dills Act by attempting to change the minimum qualifications for its Physician job classification when it required doctors to pass an exam before employment? PERB filed an application for intervention in the superior court action brought by UAPD. In September 2005, the case was removed from superior court and transferred to the U.S. District Court, Northern District.
5. *Schiavone, et al. v. Rio Linda Elverta Community Water District*, Sacramento County Superior Court Case No. 05CS01507 (PERB Case No. SA-CE-358-M). Issue: Did District violate the MMBA by failing to meet and confer under its local rules before resolving issues regarding employees' health-care benefits? PERB filed an application for intervention in the superior court action brought by Schiavone. In January 2006, the court stayed its decision

pending conclusion of PERB's administrative process in PERB Case No. SA-CE-358-M. PERB completed its processes and closed SA-CE-358-M in October 2007 when the ALJ's proposed decision in the matter became final. PERB submitted the final decision to the superior court.

6. *The Board of Trustees of the California State University (CSU) v. PERB, et al.*, California Court of Appeal, Second Appellate District, Case No. B189869 (PERB Case No. LA-CE-784-H). Issue: Did PERB err in decision number 1823-H (pertaining to an arbitrator's authority to decide tenure for CSU faculty)? The case was filed in March 2006; briefing and oral argument complete as of September 2007. In September 2007, the appellate court issued a published opinion directing PERB to vacate Decision No. 1823-H and to enter a new and different order denying the underlying unfair practice charge. The Board issued Decision No. 1823-Ha in February 2008.

7. *City of San Jose v. Operating Engineers Local Union No. 3*, California Court of Appeal, Sixth Appellate District, Case No. H030272 (PERB Case No. SF-CO-132-M). Issue: Does PERB have jurisdiction over whether essential employees may strike? The case was filed in May 2006 (and PERB sought and was granted amicus curiae status in 2006); briefing and oral argument complete as of November 2007. In March 2008, the appellate court issued a published opinion holding that PERB (as opposed to the superior court) has exclusive initial jurisdiction to decide whether employees whose services are essential to health and safety may strike in cases implicating the MMBA.

8. *County of Contra Costa v. Public Employees Union Local One, et al.*  
*County of Contra Costa v. California Nurses Association, et al.*,\* California Court of Appeal, First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227 (PERB Case Nos. N/A). Issue: Does PERB have jurisdiction over whether essential employees may strike? The case was filed in August 2006; briefing and oral argument complete as of March 2008. In May 2008, the appellate court issued a published opinion holding that PERB does not have exclusive initial jurisdiction over whether employees whose services are essential to health and safety may strike in cases implicating the MMBA.

9. *County of Sacramento v. AFSCME Local 146, et al.*  
*County of Sacramento v. AFSCME Local 146, et al.*,\* California Court of Appeal, Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790 (PERB Case Nos. N/A). Issue: Does PERB have jurisdiction over whether essential employees may strike? The case was filed in October 2006; briefing complete as of July 2007.

10. *County of Santa Clara v. SEIU Local 535 and Local 715*, California Court of Appeal, Sixth Appellate District, Case No. H030937, Santa Clara County Superior Court Case No. CV072226 (PERB Case No. N/A). Issue: Does PERB have jurisdiction over whether essential employees may strike? The case was filed in November 2006; briefing and oral argument

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\* The Court of Appeal consolidated these cases.

complete as of November 2007. In March 2008, the appellate court issued an unpublished opinion dismissing the appeal as moot because the underlying controversy was resolved by its *City of San Jose* opinion (see case entry No. 7 above).

11. *County of Mendocino v. Mendocino County Public Attorneys Association (MCPAA), et al.*, Mendocino County Superior Court Case No. SCUKEVG0798700 (PERB Case No. N/A). Issue: Does PERB have jurisdiction over whether essential employees may strike? PERB filed an application for and was granted intervention in March 2007. Simultaneously, the court denied County's request for a temporary restraining order and dismissed County's complaint, ruling that the matter falls within PERB's jurisdiction. In August 2007, at the request of MCPAA and County, the superior court dismissed the matter in its entirety.

12. *California Faculty Association v. PERB, et al.*, California Court of Appeal, Third Appellate District, Case No. C054725 (PERB Case Nos. SA-CE-194-H, SA-CE-191-H). Issue: Did PERB err in Decision No. 1876-H (holding that parking location, as opposed to parking fees, at California State University is outside the scope of representation)? The case was filed in January 2007; briefing and oral argument complete as of February 2008. In February 2008, the appellate court issued a published opinion setting aside PERB Decision No. 1876-H and remanding the matter to the Board for further proceedings.

13. *Board of Trustees of Los Angeles Unified School District (LAUSD) v. PERB, et al.*, California Court of Appeal, Second Appellate District, Case No. B197043 (PERB Case No. LA-CE-4819-E). Issue: Did PERB err in Decision No. 1884 (finding that LAUSD violated the EERA by refusing to bargain in good faith with Associated Administrators of Los Angeles) and Decision No. 1665 (the Board's underlying unit-determination finding)? The case was filed in February 2007; briefing complete as of November 2007. In May 2008, the appellate court issued an order summarily denying LAUSD's petition for writ of extraordinary relief.

14. *Magner v. PERB, et al.*, Sacramento County Superior Court Case No. 07CS00173 (PERB Case No. SA-CE-1547-S). Issue: Did PERB err in Decision No. 1862-S (adopting a Board agent's dismissal of Magner's charge alleging the State of California (Department of Forestry and Fire Protection) violated his Weingarten rights)? The case was filed in February 2007; briefing complete as of March 2007.

15. *Sacramento County Deputy Sheriffs' Association (SCDSA) v. PERB*, California Court of Appeal, Third Appellate District, Case No. C057877, Sacramento County Superior Court Case No. 07AS03998 (PERB Case No. SA-CE-485-M). Issue: Does PERB have jurisdiction over unfair practice charges involving a bargaining unit that includes peace officers, pursuant to Penal Code section 830.1, and non-peace officers (i.e., a "mixed" bargaining unit); does PERB have jurisdiction over the issue(s) presented in this case; and does PERB's denial of SCDSA's application for joinder cause irreparable harm? The superior court issued a temporary restraining order and a preliminary injunction prohibiting PERB from holding the formal hearing scheduled in SA-CE-485-M. Following PERB's appeal to the Court of Appeal, briefing commenced in May 2008; briefing underway as of June 30, 2008.

16. *Sacramento County Deputy Sheriffs' Association (SCDSA) v. PERB*, Sacramento County Superior Court Case No. 34-2008-00010058 (PERB Case No. SA-CE-485-M). Issue: May or must PERB take any action in SA-CE-485-M? SCDSA filed a petition for writ of mandamus in superior court to compel PERB "to withdraw the Charge filed on behalf of SCDSA and to dismiss the Complaint issued." The case was filed in May 2008, and briefing commenced in June 2008; briefing underway as of June 30, 2008. [This litigation relates to a PERB matter pending in the Third District Court of Appeal (see case entry No. 15 above).]
17. *Doherty, et al. v. PERB, et al.*, California Court of Appeal, Sixth Appellate District, Case No. H032365 (PERB Case Nos. SF-CE-2312-E, SF-CE-2313-E). Issue: Did PERB err in Decision No. 1928 (reversing the ALJ's proposed decision [which imputed liability to San Jose/Evergreen Community College District under a joint-employer theory and found a retaliation violation under the EERA] and dismissing the case)? The case was filed in December 2007, and briefing commenced in February 2008; briefing complete as of April 2008.
18. *Schoessler v. PERB, et al.*, California Supreme Court Case No. S162034, California Court of Appeal, Third Appellate District, Case No. C058004 (PERB Case No. SA-CE-2396-E). Issue: Did PERB err in Decision No. 1936 (adopting a Board Agent's dismissal of Schoessler's charge alleging Yuba Community College District retaliated against him in violation of the EERA by refusing to renew an employment contract)? The case was filed in January 2008. In March 2008, the appellate court granted PERB's motion to dismiss the case; Schoessler subsequently appealed the appellate court's dismissal by filing a petition for review with the California Supreme Court. After PERB filed its answer to the petition for review in April 2008, the Supreme Court denied review of the case.
19. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO (Local 21) v. PERB, et al.*, California Court of Appeal, First Appellate District, Case No. A121202 (PERB Case No. SF-CE-2282-E). Issue: Did PERB err in Decision No. 1948 (affirming an ALJ's dismissal of charge and finding that (1) the EERA preempts the provisions of the city charter requiring the San Francisco Unified School District (SFUSD) to set wages for classified employees represented by Local 21 at levels determined through interest-arbitration proceedings for the same classifications and (2) SFUSD's refusal to provide pay parity did not violate the EERA in this matter)? The case was filed in April 2008; briefing not yet commenced as of June 30, 2008.
20. *International Union of Operating Engineers, Stationary Engineers, Local 39 (Local 39) v. Sacramento Police Officers Association, City of Sacramento, PERB*, Sacramento County Superior Court Case No. 34-2008-00001129 (PERB Case No. SA-SV-164-M). Issue: Is PERB bound by the Arbitrator's decision/award? Local 39 filed a petition with the superior court to correct or, in the alternative, vacate an arbitrator's decision/award severing a particular job classification from a bargaining unit. PERB filed its response and points and authorities in February 2008. In March 2008, a hearing on the matter occurred and the superior court: (1) ruled that the arbitrator exceeded his authority (and essentially vacated the arbitrator's decision); and (2) declined to rule on whether PERB is a proper party to the action. Later in

March 2008, the parties stipulated to dismiss PERB from the action; awaiting superior court's order as of June 30, 2008.

21. *California Teachers Association (CTA) v. PERB, et al.*, California Court of Appeal, Fourth Appellate District, Case No. G040106 (PERB Case No. LA-CE-4808-E). Issue: Did PERB err in Decision No. 1945 (reversing in part the ALJ's proposed decision [which found that Journey Charter School violated the EERA by refusing to renew the contracts of three teachers in retaliation for their protected activity] and dismissing the case)? The case was filed in March 2008; briefing not yet commenced as of June 30, 2008.

22. *Jurupa Community Services District v. PERB, et al.*, California Court of Appeal, Fourth Appellate District, Case No. E044031 (PERB Case No. LA-CE-224-M). Issue: Did PERB err in Decision No. 1920-M (finding that District violated the MMBA by terminating an employee for filing a grievance and ordering District to offer the employee reinstatement and to make the employee monetarily whole)? The case was filed in September 2007. In December 2007, upon request of the parties, the appellate court dismissed the action.